

Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland

In the Matter of	:	
Paul and Grace Kaplan	:	
	:	
Complainants,	:	
	:	
vs.	:	Case No. 410-O
	:	May 21, 1999
Wintergate at Longmeade Condominium	:	
	:	
Respondent.	:	

DECISION AND ORDER

The above-entitled case came before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on November 18, 1998, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(f), 10B-12 and 10B-13 of the Montgomery County Code, 1994, as amended. The record in the captioned matter was requested to be kept open, and the record was kept open until February 15, 1999. The duly appointed hearing Panel, having considered the record, the testimony and evidence of record, finds, determines and orders as follows:

Background

On July 10, 1998, Paul and Grace Kaplan (Complainants) filed a complaint with the Commission on Common Ownership Communities against Wintergate at Longmeade Condominium (Respondent). The complaint alleged that the Respondent failed to properly maintain a common element in violation of Article V, Section 13 of the Bylaws, in that it failed to correct loud squeaking sounds emanating from the subfloor of the unit above them.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e), and the Commission voted that it was a matter within the Commission's jurisdiction. The matter was scheduled for public hearing on November 18, 1998.

Summary of Testimony

1. The Complainant testified that the noise/squeak in the ceiling is the result of a defect in the common area existing between the condominium unit directly above the Kaplans' unit and the area of the joists which transverse above the ceiling structure of the Kaplans' unit.

2. The Complainant presented a video graphic display of what Complainant perceived to be the cause of the squeak existing between the floors. Complainant opined that "shims" placed in and amongst the joists would eliminate the "squeak." The Complainant also provided an audio recording of the sound of the "squeak."

3. The Respondent stated that it was first notified of the Complainants' concerns at a time when the condominium was in litigation against its builder/developer. It said that on 4/16/97 the Complainants were advised that sound transmission issues were included in the ongoing litigation with builder.

4. Respondent stated that on 7/02/97 the Complainants declined to have their unit tested for sound transmission issues.

5. Respondent testified that on 8/18/97 they received information that Pulte had made some unspecified repairs on or near Complainants' unit.

6. Respondent stated that between 4/01/98-4/20/98 several phone calls and visits were made to the management office from Complainants regarding the "squeak." On 4/28/98 Respondent said that the Complainants were invited to address the Board regarding the noise issue, with the result that the Board authorized Complainants to contact the engineering firm representing Respondent in the litigation to seek its expertise on this issue.

7. Respondent stated that on 4/30/98 Complainants forwarded written notification informing management that Oscar Construction did perform work in units number eight and twelve. It said that on 5/12/98 Complainants orally informed management that Oscar Construction secured sections of the floor in unit number twelve.

8. As part of the record, the Respondent provided a copy of the Declaration, as well as documents depicting the condominium plat.

9. The Respondent provided documentation supporting the action it took in referring Complainant to Davidson and Associates, Construction Analysts, to obtain expertise with regard to the cause of the noise and possible remedies. (Respondent Exhibit 10)

10. At the commencement of this hearing, counsel for Respondent requested an opportunity to have an expert meet with Complainant and examine the areas from which the Complainant contended the "squeak" emanated. Complainant was notified on December 22, 1998, regarding arrangements to have Respondent's engineer investigate and test the area of the "squeak." Again on January 19, 1999, the Respondent attempted to arrange for testing and inspection, referring to two previous occasions (December 22, 1998, and January 2, 1999) when permission had been requested. On January 27, 1999, counsel for the Respondent informed the Panel of its attempts to schedule an inspection. The Panel extended the date to complete the inspection until February 15, 1999.

Findings of Fact

1. Mr. and Mrs. Kaplan are the owners of a condominium unit within the Wintergate at Longmeade Condominium, located at 2717 Snowbird Terrace, Number 8, Silver Spring, Maryland.
2. The Declaration does not identify specifically any areas to be "common areas" which exist above one condominium unit and below another condominium unit.
3. Documents provided to the Panel depicting the condominium plat did not identify any portion of the space between the top of one unit and the bottom of the unit immediately above as "common area."
4. On several occasions, while the litigation was ongoing, Respondent said that it notified Complainants that they should attempt to substantiate a basis for a warranty claim if Complainants believed the common areas were poorly constructed.
5. Respondent provided un rebutted evidence that Complainant was given several opportunities to show exactly the cause and nature of the "noise" to representatives of the Respondent and/or its agents or employees. Complainant failed to do so.

Conclusions of Law

The Panel concludes that the Respondent, in an effort to facilitate and resolve the matter, openly acknowledged that its consultant would attempt to ascertain the cause of the "squeak" that Complainant was hearing. Not knowing precisely what the consultant would find, the Respondent's conduct evidences candor with the Panel regarding its attempt to definitively establish the source of the problem. Apart from the Complainant's personal testimony, the only evidence is that the consultant hired by the Respondent in its litigation with its builder believed that such problems, while annoying, are the result of normal deflection of the wood floor assembly and that wood floors, by their very nature, move. Such movement causes stress on various components and can cause squeaks. The consultant suggested that a detailed observation and analysis of the components involved be conducted by an expert in the field. Such analysis would require at least a partial removal of some interior wall board. At all stages prior to and after the hearing, the Complainant has refused to accommodate such an inspection.

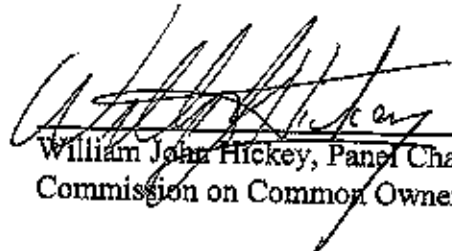
The Panel is in unanimous agreement that the Complainant has failed to prove the allegation that the Respondent is in violation of its governing documents in failing to maintain the common areas. The Complainant has failed to prove by a preponderance of the evidence that the noise and annoyance of the "squeak" is a result of a failure of the Respondent to maintain the common areas or that the noise to which the Complainant refers is indeed emanating from the common area.

Order

Therefore, the Commission orders, based upon the record herein, that the Complainant's request for relief be denied, and the complaint is hereby dismissed.

The foregoing was unanimously concurred in by Panel members Hickey, Weiss and Jacobson.

Any party aggrieved by the action of this Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure.



William John Hickey, Panel Chair
Commission on Common Ownership Communities